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20 September 1976

OLC #76-2669

MEMORANDUM FOR: See Distribution

SUBJECT : Legal Brief Submitted to the House Ethics Committee on Behalf of Daniel Schorr

Attached is a copy of the legal brief submitted by Joseph Califano, Daniel Schorr's attorney, to the House Ethics Committee "in support of Daniel Schorr's constitutional right not to disclose the identity of his confidential news source."

In addition to making the expected argument against disclosure on the basis of Schorr's First Amendment rights, Califano also argues that there is nothing really classified in the Village Voice since most of the information contained therein had previously been placed in the public domain through various leaks to the news media prior to 30 January 1976. To support this claim, he provides a "red-lined" copy of the Village Voice, showing which portions had already appeared in the news media. In so doing, he ignores the Marchetti case ruling which, as I understand it, determined that a leak to the press does not in itself constitute declassification of information. A request from Califano to identify those portions of the HSC report that are classified was rejected by Chairman Flynt of the House Ethics Committee (HEC). According to Califano,

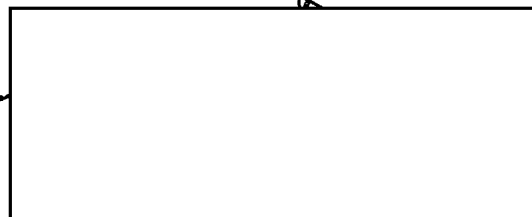
"...there is no overriding and compelling governmental interest which justifies an infringement of First Amendment rights because there was no material contained in the Village Voice version of the Select Committee's final report (a) which was not already in the public domain or (b) which would impair national security. A basic factual predicate for the Ethics Committee's broader investigation is that the Village Voice contained information which was both secret and harmful to national security. But Appendix A to Mr. Schorr's legal memorandum demonstrates that the information was neither."

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Should the House Ethics Committee inquiry result in a contempt citation against Schorr and the matter be referred to courts for prosecution, it must be expected that the defense will attempt to raise the question as to whether there is any classified national security information in the HSC report as published in the Village Voice. In anticipation of the possibility of future litigation, we have recently completed an updated CIA review of the Village Voice publication of the HSC report to identify and confirm again that classified material is contained in the publication. The results of this review are being forwarded to the IC Staff with the recommendation that a consolidated Intelligence Community study be prepared and held in readiness should a contingency arise requiring the certification of the DCI on the nature, extent and specifics of classified material in the Village Voice.

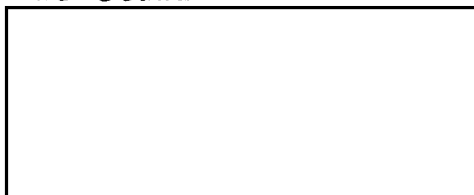
OGC may wish to study the attached legal brief in depth to determine whether there are any other issues raised in this brief which should be brought to the attention of the DCI, DDCI and DDCI/IC.



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